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09/538,570	03/29/2000	George J. Rebane	BIZ/99-0008	6083

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EXAMINER	
BOYCE, ANDRE D	

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/538,570	REBANE, GEORGE J.	
	Examiner	Art Unit	
	Andre Boyce	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,13-20,22-24,27,31,51,53-55,57,58,60,62-67 and 89-95* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,13-20,22-24,27,31,51,53-55,57,58,60,62-67 and 89-95* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This Final office action is in response to Applicant's amendment filed May 14, 2004. Claims 12, 21, 25, 26, 28, 30, 32-34, 52, 56, 59, 61, and 68 have been canceled. Claims 1-6, 8-11, 13-20, 22-24, 51, 62-67, 89, and 90 have been amended. Claims 1-11,13-20, 22-24, 27, 31, 51, 53-55, 57, 58, 60, 62-67 and 89-95 are pending.

2. The previously pending rejections under 35 USC § 112, first and second paragraphs have been withdrawn, however a new rejection has been made based upon Applicant's amendment.

The previously pending rejections to claims 1, 8, and 51 under 35 USC § 101 have been withdrawn, however the rejections to claims 89 and 90 remain, as seen below.

3. Applicant's arguments filed May 14, 2004 have been fully considered but they are not persuasive. Further, any changes to the rejections have been necessitated by Applicants amendments.

Declaration Under 37 CFR 1.131

4. The declaration filed on May 14, 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Sundaresan (USPAP 2003/0033299) reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Sundaresan reference to either a constructive reduction to practice or an actual reduction to practice. Where conception occurs prior to the date of the reference, but reduction to practice is afterwards, it is not enough merely to allege that Applicant had been diligent. Applicant must show evidence of facts establishing diligence. MPEP 715.07(a).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 4-6, 8-11,13-17, 22-24, 27, and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4-6 recite the limitation "the presentation server". There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the module" in line 22 of the claim. Since several modules are listed in the claim, the language should refer to a particular module.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 89-95 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case the independent claims 89 and 90 involve, use, or advance the technological arts (i.e., computer, processor, electronically, etc.).

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case independent claims 89 and 90 do not produce a tangible result.

A disembodied manipulation of a mathematical or abstract idea does not produce a tangible result. Here, independent claims 89 and 90 contain data or information that has been derived from at least two processing modules, the web pages being accessible to a plurality of remote computer systems. However, the claim language does not indicate that the information is actually presented or accessed, just that it is "accessible".

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

10. Claims 1-3, 8-11, 13-15, 19, 23, 51, 53-55, 62, 64-66, and 89-93 rejected under 35 U.S.C. 103(a) as being unpatentable over Papierniak et al (USPN 6,128,624), in view of Lee et al (US 2002/0072951) in further view of Decker (USPN 6,430,305).

As per claims 1 and 8, Papierniak et al discloses a system (system 100, see Figure 4) comprising: a plurality of processing modules configured for performing a predefined set of operations on data received from a data source and relating to e-commerce transaction received from a first plurality of remote computer systems (see Figure 6), a dynamic activity-level icon module (tracking module 300 which provides web commerce usage data, see column 14, lines 18-21) for iconically indicating to the user of a remote computer system relative levels of activity (i.e., electronic commerce usage),

the module automatically causing the indication of activity to be sent to the remote computer system upon user access to an electronic page (presentation of information via a personalized user interface, see column 14, lines 38-43); wherein the system is configured for presenting to a second plurality of remote computer systems via a computer network a selected set of items or data generated following the sequential processing of the data by the processing modules (network link 120 provides data communication, figure 4, wherein the information is distributed to the decision maker, column 14, lines 39-41).

Papierniak does not explicitly disclose levels of activities at network sites for different merchants (plurality of merchants) offering competitive goods or services and an electronic page comprising a listing of a plurality of merchants. However, Papierniak discloses the business operations management to monitor and understand the impact of marketing initiatives and competitive influences (column 9, lines 36-42). Further, Lee et al disclose a marketing competitor analysis, which includes information on competitors faced and how well the organization did against those competitors (¶ 0037).

Neither Papierniak nor Lee at al disclose at least two processing modules including a data stabilizer processing module for smoothing noisy or variable data using a computational solution of a minimum variance Bayesian estimation method. Decker discloses using Bayesian analysis in order to analyze the statistical risk with accepting or denying a transaction, thereby

smoothing variable data in order to reach a conclusion (column 4, lines 19-33). Papierniak, Lee et al, and Decker, are all concerned with marketing data collection, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a competitor analysis and data stabilizer processing module in Papierniak, as seen in Lee et al and Decker, respectively, as additional means of analyzing collected data, thereby increasing the robustness of the Papierniak system.

As per claim 2, Papierniak et al discloses the data source comprises one or more remote computer systems (remote information web server 240, see column 12, lines 56-58).

As per claim 3, Papierniak et al discloses the system is adapted to receive and process data related to an online e-commerce transaction (see column 8, lines 56-58).

As per claim 9, Papierniak et al discloses the system is configured to receive e-commerce data (column 8, lines 56-59) over the Internet (Internet 128, see Figure 4).

As per claim 10, Papierniak et al the data generated by the processing modules is presented over the Internet to a second plurality of remote computer systems (Internet 128).

As per claim 11, Papierniak et al discloses the system configured to serve a survey questionnaire (interview questionnaire 382, see Figure 14) to a first plurality of remote computer systems, the system being configured to receive

data supplied in response to survey and to process the data using the selected modules.

As per claims 13-15, Papierniak et al discloses the second plurality of remote computer systems comprise one or more merchant computer systems (business customer), a plurality of consumer computer systems (consumer), the system is configured to present the processed data to a plurality of merchant and consumer computer systems (via display 112, see Figure 4).

As per claim 19 and 23, Papierniak et al discloses one selected processing module comprises a statistical analysis processing module and one selected processing module comprises a dynamic activity-level icon module (as seen in above rejection of claims 1 and 8).

Claims 51, 53-55, 62, and 64-66 are rejected based upon the rejection of claims 1, 3, 3, 3, 11, 13, 15, and 14 respectively, since they are the method claims corresponding to the system claims.

As per claims 89-90, Papierniak et al discloses a presentation server (web server 308) that includes web pages containing data or information that has been derived from a dynamic activity-level icon module (tracking module 300 which provides web commerce usage data, see column 14, lines 18-21) for iconically indicating to the user of a remote computer system relative levels of activity (i.e., electronic commerce usage), the module automatically causing the indication of activity to be sent to the remote computer system upon user access to an electronic page (presentation of information via a personalized user interface, see column 14, lines 38-43), the web pages being accessible

to a plurality of remote merchant and consumer systems over a computer network (business customer and consumers).

Papierniak does not explicitly disclose levels of activities at network sites for different merchants (plurality of merchants) offering competitive goods or services and an electronic page comprising a listing of a plurality of merchants. However, Papierniak discloses the business operations management to monitor and understand the impact of marketing initiatives and competitive influences (column 9, lines 36-42). Further, Lee et al disclose a marketing competitor analysis, which includes information on competitors faced and how well the organization did against those competitors (¶ 0037).

Neither Papierniak nor Lee at al disclose at least two processing modules including a data stabilizer processing module for smoothing noisy or variable data using a computational solution of a minimum variance Bayesian estimation method. Decker discloses using Bayesian analysis in order to analyze the statistical risk with accepting or denying a transaction, thereby smoothing variable data in order to reach a conclusion (column 4, lines 19-33). Papierniak, Lee et al, and Decker, are all concerned with marketing data collection, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a competitor analysis and data stabilizer processing module in Papierniak, as seen in Lee et al and Decker, respectively, as additional means of analyzing collected data, thereby increasing the robustness of the Papierniak system.

As per claims 91 and 92, Papierniak et al discloses the network comprises the Internet (internet 310).

As per claim 93, Papierniak et al discloses the web pages include evaluation information about merchant performance, the information being derived from data processed by a selected processing module (see column 14, lines 63-67).

11. Claims 4-7, 17, 18, 20, 22, 24, 27, 31, 57, 58, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papierniak et al, in view of Lee et al, in further view of Decker, in further view of Abu El Ata (USPN 6,560,569).

As per claims 4-6, Papierniak discloses the presentation server (web server 308) presenting selected items of data following the sequential processing of data (see column 14, lines 38-45).

As per claims 4-7, 17, 18, 20, 22, 24, and 27, Papierniak et al does not explicitly disclose a saturation limited forecasting module for using available historical or recently captured data along with an estimated and/or available saturation population function as the basis for an algorithm that defines the growth of the population to a maximum attainable level, or an alarm filter module for monitoring data rates and sending a signal based on deviations from desired thresholds from a normative rate. Abu El Ata discloses models used to determine estimates for business and growth rates, including transaction rate and growth of volume (i.e. saturation forecasting, column 12,

lines 24-32). Abu El Ata also discloses computational results (i.e., data rates) compared to a theoretically best or ideal case, with any deviation diagnosed (i.e., alarm filter, column 10-11, lines 66-67 and 1-4). Papierniak and Abu El Ata are concerned with data manipulation, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a saturation limited forecasting module, and an alarm filter module in Papierniak, as seen in Abu El Ata, as additional means of analyzing collected data, thereby increasing the robustness of the Papierniak system.

As per claim 31, Papierniak et al discloses a dynamic activity-level icon processing module (as seen in above rejection of claims 1 and 8).

Claims 57, 58, and 60 are rejected based upon the rejection of claims 4, 5, and 7 respectively, since they are the method claims corresponding to the system claims.

12. Claims 16, 63, 67, 94, and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papierniak et al (USPN 6,128,624), in view of Sundaresan (USPAP 2003/0033299).

As per claims 16, 94, and 95, Papierniak et al does not disclose the presented data comprises ratings for online merchants, the web pages include ratings of merchant websites, and the web pages include ratings information for one or more products, the ratings being based on data received from the first plurality of remote computer systems, wherein the first

plurality comprises consumer computer systems. Sundaresan discloses a business rating system 10 that receives users on-line surveys for ranking merchants and products (see page 3, ¶ 32-33). Both Papierniak and Sundaresan are concerned with the effective data and information collection and analysis via the internet, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include ratings about merchants and products in Papierniak, as seen in Sundaresan, thereby providing a mechanism by which searches of businesses can be ordered based upon specific criteria (see Sundaresan, page 1, ¶ 7), thus making the system more robust.

As per claim 63, Papierniak et al does not disclose the remote computer systems comprise a plurality of consumer computer systems and the completed survey questionnaire contains data about an online transaction between the consumer and a merchant. Sundaresan discloses on-line surveys and feedback of business transactions collected from users (see page 3, ¶ 33). Both Papierniak and Sundaresan are concerned with the effective data and information collection and analysis via the internet, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a survey questionnaire that contains data about an online transaction between the consumer and a merchant in Papierniak et al, as seen in Sundaresan, thereby providing specific feedback, thus making the system more robust.

Claim 67 is rejected based upon the rejection of claim 16, since it is the method claim corresponding to the system claim.

Response to Arguments

13. In the Remarks, Applicant argues that Papierniak does not disclose a dynamic activity-level processing module as recited in the amended claims. The Examiner submits that Papierniak discloses a tracking module 300, which provides electronic commerce usage data, which is indeed merchant data. Further, Papierniak discloses the business operations management to monitor and understand the impact of marketing initiatives and competitive influences (column 9, lines 36-42). In addition the Examiner submits Lee et al as disclosing a marketing competitor analysis, which includes information on competitors faced and how well the organization did against those competitors (¶ 0037). As a result, Papierniak in view of Lee et al indeed discloses activity levels of various competing merchants.

Applicant also argues that the Examiner has not explained how the mere reference to a Bayesian method in Decker equates to the Bayesian method characterized in the claims, and that Decker expressly teaches against the use of Bayesian methods. The Examiner respectfully disagrees with both assertions. First, Decker does not teach away from Bayesian methods. Decker simply states that if the probability estimates are independent (as is the case in Applicant's data stabilization), then a Bayesian analysis may be

applied. Decker goes on to state that other regression methods better handle the inputs when the probability estimates are not independent.

Applicant also argues that Decker does not speak in terms of smoothing noisy or variable data. The Examiner submits that it is old and well known that Bayesian statistical analysis is used to smooth variable data. Decker explicitly discloses Bayesian analysis in determining risk, based upon historical data (column 4, lines 25-33). Following, Decker implicitly discloses smoothing the variable data in order to assess the risk.

Applicant also argues that Abu El Ata does not disclose any algorithm that defines growth of a population to a maximum attainable level. The Examiner submits that Abu El Ata discloses models 20 and 22, used to determined estimates for business volume and growth rate. These models are indeed algorithms (i.e., step by step process for solving a problem). Further, Abu El Ata explicitly discloses an estimation algorithm (column 13, lines 9-12).

Further, Applicant argues it is unclear how a computational result can be considered a data rate and that Abu El Ata does not disclose sending a signal based on deviations from a threshold. The Examiner respectfully disagrees with Applicant's assertions. Abu El Ata discloses the construction module 18 estimating relevant quantitative data, including processing times (i.e., data rates, column 7, lines 9-13). Following, Abu El Ata discloses models 20 and 22 used as estimation models and compared to a ideal case, with deviations diagnosed. Any deviation from the ideal will cause a diagnosis to be run (i.e., signal based on deviation).

Lastly, as seen above, the declaration filed on May 14, 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Sundaresan reference.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

adb

Susanna Diaz

SUSANNA M. DIAZ
PRIMARY EXAMINER

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